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AMENDMENTS TO THE DRAWINGS

Please substitute the enclosed replacement drawings including Figures 3, 4A, 4B, 4C, and 5 for the previous version of drawing sheets including the same figures. The replacement drawing sheets are attached hereto as Appendix A.

The replacement drawing sheets amend the drawings by adding reference number "57" to Figures 3 and 4A to identify an edge forming surface of form member 42, adding reference number "87" to Figure 4B to identify an edge forming surface of form member 72, adding reference number "107" to Figures 4C and 5 to identify an edge forming surface of form member 92, adding "deck side 66" and an arrow in Figure 4A to identify the deck side of edge forming surface 57, and adding "pool side 68" and an arrow in Figure 4A to identify the pool side of edge forming surface 57. Each of the amendments is fully supported by the original application. The specification has been amended as shown herein to coincide with these amendments to the drawings.

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REMARKS

The outstanding Office Action: (1) disapproved of the previously proposed drawing correction filed as not be in based upon the immediate prior version; (2) objected to the drawings due to missing numerals; (3) objected to the specification as failing to provide proper antecedent basis for the claimed subject matter under 37 CFR 1.75(d)(1); (4) rejected claims 1, 3, 11, 13, 14, 18, 19, 24-33, and 39-43 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention; (5) rejected claims 1-33, 35, 36, 38, 40, 42, and 43 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 3,776,501 to Loftin (hereinafter referred to as "Loftin"); (6) rejected claims 1-33, 35, 36, 38, 40, 42, and 43 under 35 U.S.C. §103(a) as being unpatentable over Loftin and U.S. Patent No. 2,914,776 to Hotz (hereinafter referred to as "Hotz"); and (7) rejected claims 1-43 under 35 U.S.C. §103(a) as being unpatentable over the Applicant's admitted prior art and Loftin.

By the forgoing amendment, claims 1, 11, 13, 19, 24, 31, 33, 34, 36-39, and 41 have been amended. No new claims have been added or cancelled. The amendments presented herein do not introduce new matter. Support for the amendments can be found in Figures 1-5 of the originally-filed drawings and the corresponding description of these figures in Applicant's originally-filed specification, for example. In particular, Figures 1-5 of the original drawings illustrate edge forming surfaces of exemplary form members, as well as the deck and pool sides of the edge forming surfaces. Further, the specification reasonably teaches that the form member is reusable. In particular, in discussing some of the prior or current edging or coping forms, paragraph 3 makes clear that one of the shortcomings of such

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systems is that the form is disposable and new forms must be used each time edging and copings are to be formed. In paragraphs 4-6, the specification continues in describing improved current edging or coping forms that are reusable. These forms are of a single piece, such that as the form is removed, a problem may occur when the form comes into contact with the concrete. These problems or difficulties are presented as problems with other forms. The present disclosure describes a form member that overcomes both of these previous shortcomings that is both reusable and can be removed with a decreased risk of undesirably marking the coping or edging during removal of the form member. Thus, the specification reasonably teaches a reusable form member as claimed in the claims as amended.

Applicant respectfully requests entry of the amendments presented herein into the record. Many of the amendments presented herein have been presented to comply with requirements for form set forth in the Office Action. (37 CFR § 1.116(b)). Upon entry of the amendments into the record, claims 1-43 will be pending with claims 1, 11, 24, and 31 being in independent form. Reconsideration of the presently pending claims is respectfully requested based on the amendments presented herein and for the following reasons.

Objections to the Drawings

On page 2 of the Office Action, the Examiner disapproved of the drawing correction filed on December 22, 2005 because Fig. 5 thereof was not based upon the immediate prior version. Consequently, Applicant has submitted an updated version of the drawing correction including a Fig. 5 based on the immediate prior version. Additionally, Applicant has included the missing reference numerals indicated in the outstanding Office Action, in order to remedy

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the objections to the drawings. For the foregoing reasons, Applicant respectfully requests that the corrected drawing sheets be entered and that the Examiner withdraw the objections to the drawings.

Objection to the Specification

The outstanding Office Action objected to the Specification as failing to provide proper antecedent basis for the claimed subject matter. In particular, the outstanding Office Action requested correction of a lack of proper antecedent basis for the term "removable coupling" set forth in claim 1 and the term "removable mating" as set forth in claim 11. Applicant respectfully points to the amendments to the Specification entered in a response dated December 16, 2005. Specific amendment was made to paragraph [0021] to specifically provide antecedent basis for the claimed terms "removable coupling" and "removable mating," as recited in claims 1 and 11, respectively. Further, with the previously detailed amendments to the specification, proper antecedent basis is provided for the terms "bottom portion" set forth in claim 17, "top portion" set forth in claim 18, and the subject matter set forth in claims 34 and 37. In light of the above-mentioned amendments, Applicant respectfully requests that the Examiner withdraw the objection to the Specification.

Rejections under 35 U.S.C. §112, Second Paragraph

On pages 3 and 4 of the outstanding Office Action, claims 1, 3, 11, 13, 14, 18, 19, 24-33, and 39-43 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claims the subject matter which applicant

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regards as the invention. For the following reasons, applicant respectfully traverses the rejections.

Regarding claim 1, the outstanding Office Action states that claim 1 is unclear as to the language “adapted to be removably coupled to the form member and to removably couple the form member to the elongate track.” The Examiner understands this language to include “elements 50, 51, 53, 56, and 62” of the Figures. (Office Action, pg. 4). However, as independent claim 1 clearly recites, a support member is adapted to be removably coupled to the form member and to removably couple the form member to the elongated pool cover track. As illustrated in Figs. 3 and 4A, only elements 51 and 53 are examples of adaptations of the support member (52). In contrast, claims 2, 6, and 7 recite limitations applied to the form member. Consequently, the metes and bounds of the language in claim 1 is readily ascertainable from the present disclosure.

Similarly, the outstanding Office Action states that claim 11 is unclear as to the language “adapted to removably mate the elongated pool cover track,” and “adapted to removably mate to the form member.” The Examiner purportedly understands this to refer to elements 50, 60, and 62 of the Figs. As illustrated in Fig. 4A, 60 refers to a clamp affixed to the present structure and 62 refers to a removable wedge, neither of which are adaptations of the support member, as claimed in claim 11. Consequently, the metes and bounds of the language in claim 11 is readily ascertainable from the present disclosure.

Further, the outstanding Office Action rejected claims 1 and 11 as being indefinite or unclear as to whether the “swimming pool” is intended to be part of the claimed combination since structure of the “apparatus” is defined as being connected thereto. (Office Action, pg.

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4). Similarly, claims 24 and 31 were rejected as being indefinite or unclear as to whether "swimming pool" is intended to be part of the claimed combination. These claims have been carefully reviewed in light of the Examiner's comments and amended as necessary. Following this amendment, all the remaining claims are believed to be in compliance with 35 U.S.C. § 112 and notice to that effect is respectfully requested.

Further, the outstanding Office Action rejected claim 3 as being redundant to claim 2, claim 13 as being redundant to claim 11, claim 14 as being redundant to claim 11, and claim 19 as being redundant to claim 11. However, Applicant respectfully points out that claim 3 adds a limitation that the adapted portion of claim 2 be configured to mate with the support member. Additionally, claims 13, 14, and 19 limit the relation and interaction of mating features claimed in independent claim 11. Consequently, applicant respectfully requests that the rejection of claims 3, 13, 14, and 19 for redundancy be reconsidered and withdrawn.

Claims 24 and 31 were rejected as ambiguous as attempting to embrace two different statutory classes of invention. Specifically, the outstanding Office Action states that "the claim preamble recites a 'method,' but the body thereof merely recites product/apparatus limitation." (Office Action, pg. 5). Applicant respectfully disagrees. Independent claim 24 recites:

A method for constructing an edging for a deck of a swimming pool having a wall and an elongated pool cover track attached to the wall of the swimming pool, comprising:

removably coupling a support member to the elongated pool cover track of the swimming pool, and

removably coupling a reusable form member, having an edge forming surface shaped to form the edging, to the support member, the removable coupling of the form member to the support member being substantially pool side of the edge forming surface.

(Emphasis Added).

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As illustrated above, independent claim 24 includes a number of method limitations including “removably coupling a support member to the elongated pool cover track,” and “removably coupling a reusable form member...to the support member.” Consequently, the statement “the body thereof merely recites product/apparatus limitations” is inaccurate. The above argument may be equally applied to claim 31. Consequently, the rejection of claims 24 and 31 as being ambiguous should be reconsidered and withdrawn.

Rejections under 35 U.S.C. § 102

The outstanding Office Action rejected claims 1-33, 35, 36, 38, 40, 42, and 43 under 35 U.S.C. § 102(b) as being anticipated by Loftin. For at least the following reasons, the rejection is respectfully traversed.

As amended, independent claim 1 recites:

An apparatus for constructing an edging for a deck of a swimming pool having a wall and an elongated pool cover track attached to the wall of the swimming pool, comprising:

a reusable form member having an edge forming surface shaped to form the edging, and

a support member adapted to be removably coupled to the form member and to removably couple the form member to an elongated pool cover track, the removable coupling of the support member to the form member being substantially pool side of the edge forming surface.
(Emphasis Added).

As illustrated above, independent claim 1 recites a support member that is adapted or configured to removably couple a form member and an elongated pool cover track. In contrast to the claimed element, Loftin fails to teach, disclose, or suggest a support member

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adapted to be removably coupled to a form member and an elongated pool cover track. In fact, the outstanding Office Action admits that "the Loftin edging constructing apparatus does not include a track and associated mating portion." (Office Action, pg. 6). Rather, Loftin teaches an apparatus for coping a wall, wherein the apparatus includes vertical legs that are attached directly to the face of a pool by fasteners (52). (See Loftin, Col. 2, lines 33-41). There is no teaching, disclosure or suggestion in Loftin of the apparatus being removably coupled to an elongated pool cover track.

It is well known that "[a] claim is anticipated [under 35 U.S.C. § 102] only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987) (emphasis added). See M.P.E.P. § 2131. As noted above, Loftin fails to teach, suggest, or disclose all of the claim limitations of independent claim 1. Consequently, for at least the above-mentioned reasons, the outstanding Office Action has failed to make out a prime facie case of anticipation under 35 U.S.C. § 102(b), and the rejection of claim 1, and all claims that depend therefrom based on Loftin should be reconsidered and withdrawn.

Further, independent claims 11, 24, and 31, as amended, also recite similar claim limitations to those of claim 1 such that the arguments made above with respect to claim 1 are equally applicable to independent claims 11, 24, and 31. Consequently, for at least the above-mentioned reasons, the outstanding Office Action has failed to make out a prime facie case of anticipation under 35 U.S.C. § 102(b), and the rejection of claims 11, 24, and 31, as well as all claims that depend therefrom based on Loftin should be reconsidered and withdrawn.

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Rejections under 35 U.S.C. § 103

A. Rejection of claims 1-33, 35, 36, 38, 40, 42, and 43 under 35 U.S.C. § 103(a) as being unpatentable over Loftin and Hotz.

The outstanding Office Action rejected claims 1-33, 35, 36, 38, 40, 42, and 43 under 35 U.S.C. § 103(a) as being unpatentable over Loftin and Hotz. For at least the following reasons, the rejection is respectfully traversed.

As amended, independent claim 1 recites:

An apparatus for constructing an edging for a deck of a swimming pool having a wall and an elongated pool cover track attached to the wall of the swimming pool, comprising:

a reusable form member having an edge forming surface shaped to form the edging, and

a support member adapted to be removably coupled to the form member and to removably couple the form member to an elongated pool cover track, the removable coupling of the support member to the form member being substantially pool side of the edge forming surface.
(Emphasis Added).

As mentioned previously, independent claims 1, 11, 24, and 31 substantially recite a support member that is adapted or configured to removably couple a form member and an elongated pool cover track. Further, as mentioned previously, Loftin fails to teach, disclose, or suggest a support member adapted to be removably coupled to a form member and an elongated pool cover track. In fact, the outstanding Office Action admits that "the Loftin edging constructing apparatus does not include a track and associated mating portion." (Office Action, pg. 6). In order to overcome this shortcomings of the Loftin reference, the outstanding Office Action looks to the Hotz reference as "disclosing an analogous edging

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constructing apparatus which further includes a form member 28 having a track 10 and associated mating portion 22a, 29." (Office Action, pg. 6).

However, in contrast to the assertions made in the outstanding Office Action, Hotz fails to remedy the shortcomings of the Loftin reference. Specifically, Hotz fails to teach or disclose an elongated pool cover track and associated mating portion. Rather, the element in the Hotz reference that is used by the office action to teach or disclose an elongated pool cover track (10) is actually a clamp member. (See Col. 2, lines 17-21). The clamp described in 10 has nothing to do with being an elongated track for coupling to an automatic pool cover. Rather, the clamp 10 illustrated in Hotz is actually a clamp used for attaching a plastic canopy to the apron of a pool to provide a weather proof swimming enclosure. (See Hotz Col. 2, lines 47-52).

"To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974)." M.P.E.P. § 2143.03. Accord. M.P.E.P. § 706.02(j). Therefore, Applicant respectfully requests that the Examiner withdraw the rejection of claims 1-33, 35, 36, 38, 40, 42, and 43 under 35 U.S.C. § 103(a) as being unpatentable over Loftin and Hotz.

Additionally, the combination of Loftin with Hotz to reject claims 1-33, 35, 36, 38, 40, 42, and 43 under 35 U.S.C. § 103(a) is improper. Specifically, there is no motivation to combine Loftin and Hotz to produce the claimed invention. While Loftin teaches an apparatus for coping a wall including a dual section from that is releasably attached to the

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wall adjacent its upper most surface, Hotz specifically teaches that a coping be "placed atop the wall" as pre-cast copings. (See Hotz, Col. 1 line 66 through Col. 2 line 2).

"The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. In re Mills, 916 F.2d 680, 16 USPQ2d 1420 (Fed. Cir. 1990)." M.P.E.P. § 2143.01.

Consequently, Applicant respectfully requests that the Examiner withdraw the rejection of claims 1-33, 35, 36, 38, 40, 42, and 43 under 35 U.S.C. § 103(a) as being unpatentable over Loftin and Hotz.

B. Rejection of claims 1-43 under 35 U.S.C. § 103(a) as being unpatentable over Applicant's Admitted Prior Art and Loftin.

The outstanding Office Action rejected claims 1-43 under 35 U.S.C. § 103(a) as being unpatentable over Applicant's admitted prior art and Loftin. For at least the following reasons, the rejection is respectfully traversed.

As amended, independent claim 1 recites:

An apparatus for constructing an edging for a deck of a swimming pool having a wall and an elongated pool cover track attached to the wall of the swimming pool, comprising:

a reusable form member having an edge forming surface shaped to form the edging, and

a support member adapted to be removably coupled to the form member and to removably couple the form member to an elongated pool cover track, the removable coupling of the support member to the form member being substantially pool side of the edge forming surface.

(Emphasis Added).

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In making the above-mentioned rejection, the outstanding Office Action points to "the Loftin reference which discloses an analogous apparatus which further includes a form member 26, 44 having two separate portions 24, 48 and 46 removably coupled by a clamp 50." However, in contrast to the assertion by the outstanding Office Action, the clamp 50 illustrated in Loftin does not "removably couple" a support member with a form member. Rather, the clamp 50, illustrated in Loftin removably couples two portions of the support member. (See Loftin Col. 2, lines 33-41). Consequently, the combination of Loftin with the admitted prior art fails to teach or suggest every element of independent claims 1, 11, 24, and 31.

It is well known that "[t]o establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974)." M.P.E.P. § 2143.03. Accord. M.P.E.P. § 706.02(j). Therefore, in light of the above argument, Applicant respectfully requests that the Examiner withdraw the rejection of claims 1-43 under 35 U.S.C. § 103(a) as being unpatentable over Applicant's admitted prior art and Loftin.

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CONCLUSION

For the foregoing reasons, the present application is thought to be in condition for allowance. Accordingly, favorable reconsideration of the application in light of the amendments and remarks provided above is courteously solicited. If any fees are owed in connection with this paper, which fees have not been elsewhere authorized, authorization is hereby given to charge those fees to Deposit Account 18-0013 in the name of Rader, Fishman & Grauer PLLC. If the Examiner has any comments or suggestions which could place this application in even better form, the Examiner is requested to telephone the undersigned attorney at the number listed below.

Respectfully submitted,

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